theory of a case, and, even though he may know facts which, in his opinion, would constitute a defense, he may confidently rely upon the defendant in the case — certainly when his interest dictates it — to perform his full duty, and is not required, under any recognized principle of law or equity, to anticipate him in so doing. He has a right to assume that the defendant will make all defenses available to him which he, in the exercise of his own judgment and discretion, deems wise and politic to make. We conclude from the foregoing that the fact that the plaintiff in the action at law failed to set forth facts which would have defeated her recovery, as hereinbefore detailed, affords no ground for a court of equity to vacate the judgment obtained by her in the action."

WILLS — WITNESSES SIGNING BEFORE TESTATOR, EFFECT. — There has been considerable difference of opinion among the courts as to whether a will is subscribed by witnesses, so as to satisfy the statute requiring wills to be attested and subscribed by witnesses, if the witnesses subscribe the paper before the testator has affixed his signature to it. On the one hand it is argued that there is no will to subscribe till the testator has signed it, and subscribing before the testator has signed is not subscribing the *will*. This view has been adopted in England, Georgia, Massachusetts, New York, and Wisconsin [*Byrd Goods of*, (1842), 3 Curteis Ecc; 117, 7 Eng. Ecc. 391; *Jackson* v. *Jackson* (1868), 39 N. Y. 153, 162; *Sisters of Charity* v. *Kelly*, (1876), 67 N. Y. 413; *Brooks* v. *Woodson* (1891), 87 Ga. 379, 13 S. E. 702, 14 L. R. A. 160; *Marshall* v. *Mason* (1900), 176 Mass. 216, 57 N. E. 340, 5 Pro. R. A. 613; and assumed in *Lewis's Will* (1881), 51 Wis. 101, 113, 7 N. W. 829]; and the Supreme Court of North Carolina has for a number of years been reckoned in the same list. But in *Cutler* v. *Cutler* (Feb. 1902), 130 N. Car. 1, 40 S. E. 689, that court held an exception on that ground not well taken, saying: "It seems singular that the witnesses should have signed before the testator, as there was nothing at that time for them to attest. It was certainly awkward and illogical for them to do so, and can only be sustained by its being all a part of one and the same transaction." This seems to be the more approved view. The witnesses are required to subscribe the paper in order that they may be able to identify it when presented for probate, — so that they can swear that it is the same paper which they saw the testator execute; and so that in case of their death or absence, their signatures will certify to the fact. In what possible way might the object of the statute be defeated by allowing a will which the witnesses subscribed before they saw the testator sign it? Most of the courts have held that wills so executed are valid. The reader will find the decisions adopting this view reviewed in the following: *Lacey* v. *Dobbs* (1900), 61 N. J. Eq. 575, 47 Atl. 481, 55 L. R. A. 580; *Gibson* v. *Nelson* (1899), 181 Ill. 122, 54 N. E. 901, 72 Am. St. Rep. 254, 5 Pro. R. A. 67; *Kaufman* v. *Coughman* (1897), 49 S. Car. 159, 27 S. E. 16, 61 Am. St. Rep. 808. The leading case on this side is *Swift* v. *Wiley* (1840), 1 B. Mon. (40 Ky.) 114.

IMPEACHMENT OF WITNESS—PRIVILEGED COMMUNICATION.—In the case of *Herman* v. *Schlesinger*, decided by the Supreme Court of Wisconsin, May 13, 1902, and reported in 90 N. W. Rep. 460, that court held, and quite cor-

rectly if the question were an abstract one, that the rule of privilege did not protect the client against disclosing the fact as to whether there was a communication between his attorney and himself as to particular subject matters and how it was made, but only against being compelled to disclose *what* such communication was. This doctrine was applied in this case under the following circumstances, viz.: A party on the stand as a witness, under cross-examination was asked whether, in the preparation of his case for trial, his attorney had not interrogated him as to the matters involved, and whether such interrogatories and his replies to them were reduced to writing. The trial court excluded the testimony, but the supreme court held the exclusion erroneous, determining, however, that the error in this particular case was without prejudice. The reason assigned for the conclusion of the court was that it went to the credibility of the witness.

It is recalled that while the late Judge Cooley, then a Justice of the supreme court of Michigan, was holding a term of the circuit court of Lenawee county upon the invitation of the bar of that county, and under the special appointment of the Governor, an attorney attempted to discredit a witness who was the opposing party, by asking him, upon cross-examination, whether he had not, before taking the witness stand, talked over the matter to which he had testified, with his attorney. Judge Cooley remarked that his attorney would have been derelict in his duty if he had not done so, unless circumstances made it impossible, and stopped the examination. Certainly there can be nothing discreditable in doing that which it is one's duty to do. Had the claim been that in such conversation the attorney was instructing the client as to his testimony, that he might testify, or refrain from testifying, to particular matters, or that the attorney was training the witness that he might be more certain to recollect particular matter, a different question would be presented. But nothing of the sort is suggested in the case presented. The court expressly states, and the point is decided with that fact assumed, that the object of this interrogation between the attorney and his client, was that of "making the attorney to know what his client might be expected to testify to." It would seem a dangerous precedent to establish, that a jury should be permitted to conclude that a party was not entitled to credit because he had talked with his attorney about his case, though such conversation was for the purpose of "enabling the attorney to know what his client might be expected to testify to," and even though such conversation was reduced to writing for the attorney's benefit on the trial.

EVIDENCE—DYING DECLARATION.—A case recently before the supreme court of Mississippi reviewing the trial of one Harper, charged with homicide, presents an interesting question of evidence. Upon the trial a declaration in writing by the victim of the homicide reciting the circumstances of the assault was rejected. The declaration was prepared by an attorney in anticipation of a possible or probable fatal termination of the injuries, "to be signed," as stated by the court, "whenever declarant came to think he would die." Some time later and when death was near, the statement was signed by declarant. The court concludes that it was not made to appear that it was signed "under a solemn sense of impending dissolution." After disposing of